

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NEWREZ LLC d/b/a SHELLPOINT  
MORTGAGE SERVICING

Plaintiff,

v.

KIMBERLY USSERY,

Defendant.

No. 2:25-cv-001169-DJC-AC

ORDER

Plaintiff NewRez LLC, d/b/a Shellpoint Mortgage Servicing brought this unlawful detainer action against Defendant Kimberly Ussery under California state law on August 9, 2024. On April 22, 2025, Defendant filed a Notice of Removal in federal court, seeking to remove the action from the San Joaquin County Superior Court. (Not. of Removal (ECF No. 1).) This is the fourth time that Defendant has sought to remove the state court action to federal court.<sup>1</sup>

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<sup>1</sup> The previous three removal actions were all remanded back to the superior court. *NewRez LLC v. Ussery*, 2:24-cv-03698-TLN-CSK; *NewRez LLC v. Ussery*, 2:25-cv-00740-DJC-JDP; *NewRez LLC et al v. Ussery et al*, 2:25-cv-00895-DC-JDP.

1 A district court has “a duty to establish subject matter jurisdiction over the  
2 removed action *sua sponte*, whether the parties raised the issue or not.” *United*  
3 *Investors Life Ins. Co. v. Waddell & Reed, Inc.*, 360 F.3d 960, 967 (9th Cir. 2004). The  
4 removal statute, 28 U.S.C. § 1441, is strictly construed against removal jurisdiction.  
5 *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1107 (9th Cir. 2010).  
6 It is presumed that a case lies outside the limited jurisdiction of the federal courts, and  
7 the burden of establishing the contrary rests upon the party asserting jurisdiction.  
8 *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). The strong  
9 presumption against removal jurisdiction means that “the court resolves all ambiguity  
10 in favor of remand to state court.” *Hunter*, 582 F.3d at 1042. That is, federal  
11 jurisdiction over a removed case “must be rejected if there is any doubt as to the right  
12 of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).  
13 “If at any time before final judgment it appears that the district court lacks subject  
14 matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). Remand under  
15 28 U.S.C. § 1447(c) “is mandatory, not discretionary.” *Bruns v. NCUA*, 122 F.3d 1251,  
16 1257 (9th Cir. 1997).

17 “The presence or absence of federal question jurisdiction is governed by the  
18 ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when  
19 a federal question is presented on the face of the plaintiff’s properly pleaded  
20 complaint.” *California v. United States*, 215 F.3d 1005, 1014 (9th Cir. 2000) (quoting  
21 *Audette v. Int’l Longshoremen’s & Warehousemen’s Union*, 195 F.3d 1107, 1111 (9th  
22 Cir. 1999)). Under the well-pleaded complaint rule, courts look to what “necessarily  
23 appears in the plaintiff’s statement of his own claim in the bill or declaration, unaided  
24 by anything alleged in anticipation of avoidance of defenses which it is thought the  
25 defendant may interpose.” *Id.* (quoting *Okla. Tax Comm’n v. Graham*, 489 U.S. 838,  
26 841 (1989)). Accordingly, “a case may not be removed to federal court on the basis of  
27 a federal defense . . . even if the defense is anticipated in the plaintiff’s complaint, and  
28 even if both parties concede that the federal defense is the only question truly at

1 issue." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987); see also *Vaden v.*  
2 *Discover Bank*, 556 U.S. 49, 70 (2009) ("It does not suffice to show that a federal  
3 question lurks somewhere inside the parties' controversy, or that a defense or  
4 counterclaim or that a defense or counterclaim would arise under federal law.").

5 Here, Defendant seeks removal pursuant to 28 U.S.C. sections 1331, 1441, and  
6 1443. (Removal Not. at 1.) She also references: U.C.C. Articles 3, 6, and 9; 42 U.S.C.  
7 section 1983; 15 U.S.C. sections 1601-1693; and 12 U.S.C. sections 2601-2617. (*Id.* at  
8 1-2.) However, a review of the complaint filed in state court shows that Plaintiff did not  
9 raise a federal claim in that complaint. (Removal Not. at 6-8.) Rather, Plaintiff brings a  
10 straightforward unlawful detainer action against Defendant, which is a matter purely of  
11 state law. Defendant's reliance on federal law in defending against Plaintiff's state law  
12 claim does not suffice to confer jurisdiction on this Court because the defensive  
13 invocation of federal law cannot form the basis of this Court's jurisdiction. See  
14 *California*, 215 F.3d at 1014. Because there is no federal question appearing in  
15 Plaintiff's complaint, Defendant has failed to properly invoke this Court's jurisdiction.

16 Defendant's assertions that this court can properly hear the state court action  
17 have been repeatedly rejected. See *NewRez LLC v. Ussery*, 2:24-cv-03698-TLN-CSK;  
18 *NewRez LLC v. Ussery*, 2:25-cv-00740-DJC-JDP; *NewRez LLC et al v. Ussery et al*, 2:25-  
19 cv-00895-DC-JDP. Under the doctrine of res judicata, repetitious suits involving the  
20 same parties and concerning the same cause of action are prohibited. *U.S. v. State of*  
21 *Cal.*, 521 F. Supp. 491, 498. (E.D. Cal. 1980). Res judicata applies where "the earlier  
22 suit (1) involved the same 'claim' or cause of action as the later suit, (2) reached a final  
23 judgment on the merits, and (3) involved identical parties or privies." *Mpoyo v. Litton*  
24 *Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005) (quoting *Sidhu v. Flecto Co.*,  
25 279 F.3d 896, 900 (9th Cir. 2002). The elements of res judicata are met here.  
26 Defendant's removal action involves the same underlying state court case, STK-CV-  
27 LUDRF-2024-13395. Additionally, this Court has remanded the case back to state  
28 court numerous times, finding that it does not have jurisdiction. See *Vaden*, 556 U.S.

1 at 70. And finally, this action, the underlying state action, and the previous three  
2 removal attempts all involve the same named parties. Accordingly, res judicata further  
3 bars this Court from hearing this case.

4 The Court hereby REMANDS this case to the San Joaquin County Superior  
5 Court for all future proceedings. The Clerk's Office is directed to no longer accept  
6 new Notices of Removal from Kimberly Ussery related to San Joaquin Superior Court  
7 Case No. STK-CV-LUDRF-2024-13395. Should Defendant seek to file additional non-  
8 Removal related documents related to Case No. STK-CV-LUDRF-2024-13395, the  
9 Clerk of the Court is directed to file such documents under the current case number  
10 (2:25-cv-01169-DJC-AC), rather than initiating a new case number. This Order  
11 resolves all pending motions.

12 IT IS SO ORDERED.

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14 Dated: **April 23, 2025**

  
Hon. Daniel J. Calabretta  
UNITED STATES DISTRICT JUDGE

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